IN THE SUPREME COURT OF OHIO

STATE EX REL. MARCELLUS GILREATH *Relator,* v. **CUYAHOGA JOB AND FAMILY SERVICES**, *et al.* *Respondents.*	Case No.: 2022-0824
RELATOR MARCELLUS GILREATH'S MERIT BRIEF	

ORIGINAL ACTION IN MANDAMUS

Brian D. Bardwell (0098423)
Speech Law LLC
1265 West Sixth Street, Suite 400
Cleveland, OH 44113-1326
216-912-2195 Phone/Fax
brian.bardwell@speech.law
Attorney for Relator Marcellus Gilreath

Caitlyn N. Johnson (0087724)
Iris Jin (0092561)
Assistant Attorneys General
Health and Human Services Section
30 E. Broad Street, 26th Floor
Columbus, Ohio 43215-3400
Tel: 614-466-1651 | Fax: 855-326-1696
caitlyn.johnson@ohioago.gov
iris.jin@ohioago.gov
Attorneys for Respondents

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1. The Ohio Public Records Act authorizes a writ of mandamus if a public office fails to produce records in a reasonable amount of time. Fourteen months after Dr. Gilreath's request, Respondents still haven't even looked for responsive records. Is Dr. Gilreath entitled to a writ of mandamus compelling Respondents to find and produce those records?

2. The Act permits a requester to receive records on the same medium the public office keeps them on. Dr. Gilreath requested native versions of database records about him, but Respondents have only produced screenshots of those records. Is Dr. Gilreath entitled to a writ of mandamus compelling Respondents to produce those records on the same medium they use?

3. The Act requires a public office to organize and maintain public records so they can be made available for inspection. Respondents don't maintain their own records, can't access them themselves, and don't know if the agency that does maintain them will cooperate with Dr. Gilreath's request. Is Dr. Gilreath entitled to a writ of mandamus compelling Respondents to organize and maintain public records so they can be made available for inspection?

4. A requester is entitled to court costs and attorney's fees if a public office withholds records in bad faith. After receiving Dr. Gilreath's request, Respondents stopped processing it without any reason, responded only after he filed suit, and to this day refuse to search for the records he's asking for. Does this misconduct constitute bad faith warranting an award of court costs and attorney's fees?

5. A requester is entitled to attorney's fees if a public office fails to respond affirmatively or negatively to a public records request within a reasonable time. Respondents did not respond affirmatively or negatively to Dr. Gilreath's request for nearly five months. Is Dr. Gilreath entitled to attorney's fees?

STATEMENT OF FACTS

Relator Marcellus Gilreath is a disabled former doctor in the U.S. Army Medical Corps who was wrongly convicted of attempted grand theft because he lawfully applied for and obtained food stamps.[1] After prosecutors admitted their error and had his conviction vacated, Dr. Gilreath began investigating how county and state food-stamp programs deal with allegations of fraud.[2] To that end, he sought records of benefit overpayments from the Cuyahoga County Prosecutor's Office, Cuyahoga Job and Family Services, and the Ohio Department of Job and

[1] Amended Complaint, ¶¶ 7–15; 23–27.

[2] Amended Complaint, ¶¶ 23–28.

Family Services.[3] All three agencies either refused to provide the requested records or ignored his request altogether.[4]

Dr. Gilreath therefore brought this original action against each agency and against their directors, alleging violations of the Ohio Public Records Act.[5] Dr. Gilreath successfully resolved his claims against the Cuyahoga County Respondents in mediation, but the ODJFS Respondents are currently unwilling to produce the records he's requested or make him whole for the attorney's fees he's incurred in obtaining what few records they have made available.

Dr. Gilreath's request to ODJFS sought four items: (1) CRIS-E case history for Dr. Gilreath; (2) Ohio Benefits case history for Dr. Gilreath; (3) Overpayment records for Dr. Gilreath; and (4) Records of any investigation into Dr. Gilreath's alleged theft of food stamps. Respondents produced a single record in response to Dr. Gilreath's request: a printout of screenshots of records from the CRIS-E, a retired electronic database.[6] Although Dr. Gilreath sought this data in the same medium in which ODJFS keeps it,[7] Respondents admit they did not produce it as requested.[8] And although Dr. Gilreath is still seeking additional records contained in e-mail messages sent using ODJFS e-mail addresses,[9] Respondents admit they have not even bothered to search for those records.[10]

[3] Amended Complaint, ¶¶ 29–52.
[4] Amended Complaint, ¶¶ 34–35; 40–36; 53–60.
[5] Ohio Rev. Code § 149.43
[6] Third Affidavit of Kelly Brogan, Respondents' Ex. B, ¶ 8.
[7] Answer to Amended Complaint, ¶ 51–52.
[8] Answer to Amended Complaint, ¶ 71.
[9] Amended Complaint, ¶¶ 61–63.
[10] Answer to Amended Complaint, ¶ 69.

LAW & ARGUMENT

I. Because Respondents remain out of compliance with their obligations under the Ohio Public Records Act, Dr. Gilreath is entitled to a writ of mandamus ordering them to comply with those obligations.

"To be entitled to a writ of mandamus, a relator … must establish, by clear and convincing evidence, a clear legal right to the requested relief and a clear legal duty on the part of the respondent to provide it."[11] "In a mandamus-enforcement action, the requester's basic burden of production is to plead and prove facts showing that he or she requested a public record pursuant to R.C. 149.43(B)(1) and that the public office or records custodian did not make the record available."[12]

Proposition of Law #1:
When a public office refuses to even search for requested records, a relator is entitled to at least a limited writ of mandamus compelling it to do so.

Unlike many other freedom-of-information laws, the Ohio Public Records Act does not include language explicitly obligating public offices to look for records responsive to a request.[13] But such an obligation is necessarily implied, as a public office cannot produce "all public records responsive to the request" if it never looks to see whether it has any records:

> If the agency can lightly avoid its responsibilities by laxity in identification or retrieval of desired materials, the majestic goals of the Act will soon pass beyond reach. And if, in the face of well-defined requests and positive indications of overlooked materials, an agency can so easily avoid adversary scrutiny of its search techniques, the Act will inevitably become nugatory.[14]

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[11] *State ex rel. Ware v. DeWine*, 163 Ohio St. 3d 332, ¶ 16 (2020).

[12] *Welsh-Huggins v. Jefferson Cnty. Prosecutor's Office*, 163 Ohio St. 3d 337, ¶ 16 (Ohio 2020).

[13] *See*, *e.g.*, 5 U.S.C. § 552 ("In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records."); Fla. Stat. § 119.07 (requiring records custodians to make "reasonable efforts to determine … whether such a record exists").

[14] *Founding Ch. of Scientology, v. Nat. Sec. Agency*, 610 F.2d 824, 837 (D.C. Cir. 1979).

Here, Dr. Gilreath has sought access to four items of records. The evidence indicates that ODJFS conducted at least some search for the first two items,[15] but there is no indication that they searched for Items 3 or 4. Indeed, Bill Teets, a Department employee designated to receive public record requests, admits that in this case—like any other—he never looked for any responsive records, instead forwarding Dr. Gilreath's request directly to the Department's lawyers.[16] But the lawyer responsible for processing Dr. Gilreath's request admits that she never searched for Items 3 or 4,[17] and she has no knowledge of anyone else searching for those records.[18] That refusal to make this inquiry leaves the Court in the unenviable position of deciding whether to order the production of records without knowing whether those records even exist. In similar situations, the Court has granted limited writs requiring respondents to produce the requested records or certify that none exist.[19]

Because the Court cannot yet make an informed decision as to whether records should or should not be produced, it should likewise grant a limited writ requiring ODJFS to conduct a thorough search, certify the results of that search, and produce whatever records it finds.

Proposition of Law #2:
When a public office refuses to produce records in the medium upon which it keeps them, a relator is entitled to a writ of mandamus compelling it to do so.

The Ohio Public Records Act obligates government offices and officials who receive a request for records to "permit the requester to choose to have the public record duplicated …

[15] Affidavit of Christopher Dickens, Respondents' Ex. C, ¶ 6.

[16] Deposition of Bill Teets, 17:18–19:2.

[17] Brogan Dep., 36:25–37:5.

[18] Brogan Dep., 37:6–38:5.

[19] *See*, *e.g.*, *State ex rel. Sultaana v. Mansfield Corr. Inst.*, 2023-Ohio-1177, ¶ 2 ("limited writ compelling the prison to produce additional requested records or to certify that no responsive records exist"); *State ex rel. Harris v. Pureval*, 2018-Ohio-4718, ¶ 18, 155 Ohio St. 3d 343, 347, 121 N.E.3d 337, 341 ("limited writ of mandamus … requiring Pureval to provide responsive records or to clarify that no such records exist").

upon the same medium upon which the public office or person responsible for the public record keeps it."[20] For example, in *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St. 3d 172 (2005), a reporter sought a copy of an audiotape, but the prosecutor refused to copy it, insisting that the reporter could only listen to the tape or receive a transcript of it instead. This Court granted an immediate peremptory writ, noting that because the prosecutor maintained the requested record in audiotape format, he "had a duty to provide the Dispatch with a copy … in that same format."[21] The same was true in *State ex rel. Data Trace Info. Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St. 3d 255 (2012), where this court held that a county fiscal office could not force requesters to accept paper printouts of records it kept digitally.

Here, there is no dispute that Dr. Gilreath requested access to his "CRIS-E case history" or that he chose to have the records duplicated upon the same medium upon which ODJFS keeps it.[22] Nor is there any dispute that ODJFS has not produced the CRIS-E records in that medium; instead, they viewed the case history on a computer monitor, captured images of the data, and then saved the images as PDF files.[23]

But PDF files of screenshots of queries of Dr. Gilreath's case history are not the same as the data from the database itself. As this Court has recognized time and time again, compiling Dr. Gilreath's case history into a relational database adds value to those records that is not available when the same information is flattened into a PDF image:

> Members of the public should not be required to exhaust their energy and ingenuity to gather information which is already compiled and organized in a document created by public officials at public expense. Similarly, a public agency

[20] Ohio Rev. Code § 149.43(B)(6).

[21] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, ¶ 14

[22] Respondents' Ex. A-2 ("I prefer to inspect the records … in their native electronic format.").

[23] Third Affidavit of Kelly Brogan, Respondents' Ex. B, ¶ 8.

> should not be permitted to require the public to exhaust massive amounts of time and resources in order to replicate the value added to the public records through the creation and storage on tape of a data base containing such records.[24]

But even now, more than a year after Dr. Gilreath made a request for those records, Respondents still refuse to produce it. Because Respondents still have not made the CRIS-E history available upon the medium in which they keep it, Dr. Gilreath is entitled to a writ of mandamus compelling them to produce it.

Proposition of Law #3:
When a public office fails to organize and maintain public records in a manner that they can be made available for inspection, a relator is entitled to a writ of mandamus compelling it to do so.

The Ohio Public Records Act obligates government offices and officials to "organize and maintain public records in a manner that they can be made available for inspection or copying" upon request.[25]

Here, Respondents failed to organize and maintain the e-mails on the jfs.ohio.gov server in a manner that they can be made available for inspection. As Chief Inspector Steven Johnson explained in his affidavit, the Department uses the jfs.ohio.gov domain for all its employees' e-mails.[26] The Department has also made a decision to maintain e-mails sent to and from county JFS agencies.[27]

Although those records are created and kept on the jfs.ohio.gov server, they are not maintained in a way that they can be promptly made available for inspection. Instead, because "ODJFS does not maintain its own e-mail servers,"[28] the Department is at the mercy of an entirely different public office—the Department of Administrative Services—to find someone

[24] *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 459-60, 584 N.E.2d 665, 669 (1992).
[25] Ohio Rev. Code § 149.43(B)(2).
[26] First Affidavit of Steven Johnson, Answer to Amended Complaint, Ex. B, ¶ 6.
[27] *Id.*
[28] *Id.* at ¶ 9.

who can figure out how to navigate their e-mail system, Indeed, even the top IT official at ODJFS is unable to search for e-mails on the ODJFS server.[29]

So while the Public Records Act requires ODJFS to both maintain its e-mails and to maintain them in a manner that they can be made available for inspection, ODJFS admits—over and over again—that they fail to maintain those e-mails at all.

- "Rather, DAS maintains and controls certain state-provided information technology resources, including ODJFS's email systems and servers and, as a result, the counties' email systems and servers."[30]
- "DAS maintains and controls certain state-provided information technology (IT) resources, including ODJFS's email systems and servers."[31]
- "DAS also maintains and controls the counties' email systems and servers."[32]
- "[T]he servers are housed and retained and maintained by the Department of Administrative Services."[33]
- "[T]he Department of Administrative Services maintains and controls those e-mails on their servers."[34]
- "In 2022, ODJFS did not have the ability to directly search and retrieve ODJFS emails."[35]
- "In 2022, if ODJFS wished to retrieve ODJFS emails, ODJFS had to request such emails through DAS."[36]

Perhaps such an arrangement would be tenable if there were safeguards in place to ensure that the office maintaining the records for ODJFS would actually cooperate with requests for them. But ODJFS can't demonstrate those safeguards are in place; their in-house counsel doesn't

[29] Deposition of Steven Johnson, 14:2–13.
[30] Respondents' Second Mot. for Judgment on the Pleadings, 6.
[31] Second affidavit of Steven Johnson, Respondents' Ex. E, ¶ 7.
[32] Second affidavit of Steven Johnson, Respondents' Ex. E, ¶ 7.
[33] Johnson Dep., 14:12–13.
[34] Johnson Dep., 26:13–15.
[35] Affidavit of Mark Smith, Respondents' Ex. D, ¶ 10.
[36] Affidavit of Mark Smith, Respondents' Ex. D, ¶ 11.

know what restrictions DAS places on her ability to access ODJFS e-mails,[37] and doesn't know if DAS would actually turn those e-mails over if she asked for them.[38]

Because Respondents do not maintain and organize their e-mails in a manner that they can be made available for inspection, Dr. Gilreath is entitled to a writ of mandamus requiring them to do so.

II. Because Respondents remained out of compliance with their obligations more than 10 business days after the petition for mandamus, Dr. Gilreath is entitled to statutory damages.

Proposition of Law #4:
A relator is entitled to a full award of statutory damages when a respondent fails to comply with its obligations under the Ohio Public Records Act for more than 10 days after the filing of the mandamus action.

A relator is entitled to statutory damages if: (1) his request is transmitted by "hand delivery, electronic submission, or certified mail;" (2) his request "fairly describes the public record or class of public records" to be produced; and (3) the court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section. "[S]tatutory damages are mandatory whenever a public-records custodian fails to comply with her obligation."[39]

Here, Respondents admit that the request was transmitted by electronic submission.[40] They likewise agree that the request fairly described what Dr. Gilreath was seeking; at no point did they conclude the request was overly broad or ambiguous.[41] The only remaining question, then, is whether they failed to comply with an obligation under division (B) of the Ohio Public Records Act.

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[37] Brogan Dep., 74:19–22.
[38] Brogan Dep., 81:6–9.
[39] *State ex rel. Ware v. City of Akron*, 164 Ohio St. 3d 557, ¶ 18 (2021).
[40] Deposition of Bill Teets, 15:23–17:2; Exhibit 1.
[41] Deposition of Kelly Brogan, 35:1–8.

The Ohio Public Records Act obligates government offices and officials who receive a request for records to ensure that "all public records responsive to the request shall be promptly prepared and made available for inspection to the requester."[42] "Although the word 'promptly' is not defined by applicable statute, its customary meaning is `without delay and with reasonable speed.'"[43]

For instance, in *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St. 3d 619 (1994) , a reporter asked the Warren Police Department for access to every internal investigation from a span of six years, every incident report written in the previous year, every traffic ticket written in the previous year, and full personnel files for every single officer on the force. When the respondents took more than four months to fulfill the "admittedly broad" request, this Court granted a writ of mandamus to compel a prompt inspection.[44]

Here, Respondents admit they received Dr. Gilreath's request on February 25, 2022.[45] Dr. Gilreath filed this action on July 15. But Respondents admit they "did not provide any records in response to Dr. Gilreath's request before July 19, 2022."[46] Under *Warren Newspapers*, that delay in responding—closer to five months, for a far narrower request—constitutes a failure to comply with the obligation to promptly prepare records and make them available for inspection.[47]

Beyond that initial failure, Respondents likewise remain out of compliance with their obligations even today, as laid out above in Section I:

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[42] Ohio Rev. Code § 149.43(B)(1).

[43] *State ex rel. Consumer News Services, Inc. v. Worthington City Board of Education*, 97 Ohio St. 3d 58, 64 (Ohio 2002) (cleaned up).

[44] *State ex rel. Warren Newspapers* at 624.

[45] Answer to Amended Complaint, ¶ 7.

[46] Answer to Amended Complaint, ¶ 14.

[47] *See also State ex rel. DiFranco v. City of S. Euclid*, 138 Ohio St. 3d 367, ¶ 21 (2014) ("[T]he absence of *any* response over a *two-month period* constitutes a violation of the obligation … that the records be 'promptly prepared and made available.'").

- Respondents still have not even searched for records responsive to Items 3 and 4 in Dr. Gilreath's request.
- Respondents still have not produced the CRIS-E history upon the medium in which they maintain it.
- Respondents still do not organize and maintain their e-mails in a manner that they can be made available for inspection.

Because Respondents had not complied with *any* of their obligations under the Ohio Public Records Act until the 11th business days after Dr. Gilreath filed this action—and because they remain out of compliance even today—Dr. Gilreath is entitled to $1,000 in statutory damages.

III. Because he is entitled to a writ of mandamus and because Respondents acted in bad faith, Dr. Gilreath is entitled to court costs.

"A relator in a public-records mandamus action is entitled to court costs only if (1) the court orders relief or (2) the court determines that the public office acted in bad faith by voluntarily making records available for the first time after the relator commenced the mandamus action."[48] "As a general rule, when a relator prevails on a public-records mandamus claim, an award of court costs is mandatory."[49] Here, Dr. Gilreath is entitled to court costs under both the first and the third criteria.

A. Dr. Gilreath is entitled to court costs because he is entitled to a writ of mandamus.

As laid out above, Dr. Gilreath is entitled to a writ of mandamus because Respondents still have not even searched for records responsive to his request, still have not produced his CRIS-E history on the medium upon which they keep it, and still do not organize and maintain their e-mails in a manner that they can be made available for inspection.

[48] *State ex rel. Howson v. Del. Cty. Sheriff's Office*, 2023-Ohio-1440, ¶ 26.
[49] *State ex rel. McDougald v. Greene*, 163 Ohio St. 3d 471, ¶ 18 (2020).

Because he is entitled to a writ based on any of those failures to comply with the Ohio Public Records Act, "an award of court costs is mandatory."[50]

B. Dr. Gilreath is entitled to costs because Respondents acted in bad faith.

Proposition of Law #5:
A relator is entitled to an award of attorney's fees if there is some evidence that the Respondents acted in bad faith.

Even if he is not entitled to even a limited writ of mandamus, Dr. Gilreath would nonetheless be entitled to costs because Respondents acted in bad faith when they voluntarily made records available for the first time only after he commenced his mandamus action.

"[B]ad faith, although not susceptible of concrete definition, embraces more than bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another."[51]

1. The Department's refusal to disclose its instructions to the employees working on Dr. Gilreath's request—even after waiving privilege—supports an inference of bad faith.

Here, the evidence indicates that Dr. Gilreath's request initially went through normal protocols and was on track to be released until the legal department's involvement derailed it. The request arrived in Bill Teets's inbox at 4:30 p.m. on February 25, 2022; within 30 minutes, it had been distributed to at least seven people to assist in fulfilling it, including Christina Rose, the employee who actually conducted a search for the CRIS-E records and transmitted them to Ms. Brogan for review.[52]

[50] *State ex rel. Hicks v. Fraley*, 2021-Ohio-2724, ¶ 25.

[51] *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St. 3d 272, 276 (1983).

[52] C. Rose e-mail to M. Cunningham, Feb. 25, 2022, Relator's Ex. 4.

But in a separate string of messages, Linette Alexander, deputy chief counsel for ODJFS,[53] removed most of those participants and provided extensive direction about Dr. Gilreath's request to only Ms. Brogan and Matthew Cunningham.[54] That night and the next business day, they continued to discuss the request, with Ms. Alexander's final instructions to Ms. Brogan and Mr. Cunningham at coming at 9:26 a.m. on February 28, 2022, five minutes before Mr. Cunningham received Dr. Gilreath's CRIS-E history.[55]

In their bid to establish that they acted negligently rather than in bad faith,[56] Respondents waived privilege with respect to this matter by repeatedly disclosing Ms. Brogan's communications with staff assisting her on Dr. Gilreath's request.[57] But once discovery opened up, the Department sought to reassert the privilege it had already waived and prevent any further disclosure of how it was handling Dr. Gilreath's request. Dr. Gilreath sought access to those messages,[58] but Respondents redacted them. The Department likewise refuses to describe or in any way characterize the instructions Ms. Alexander gave Ms. Brogan in those e-mails,[59] but Ms. Brogan admits that after receiving them, she "took no further action to move Dr. Gilreath's request forward."[60]

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[53] Brogan Dep., 22:7–8.

[54] L. Alexander e-mail to K. Brogan, Feb. 28, 2022, Relator's Ex. 3.

[55] *Compare* L. Alexander e-mail to M. Cunningham, Relator's Ex. 3; C. Rose e-mail to M. Cunningham, Relator's Ex. 4.

[56] Second Motion for Judgment on the Pleadings, 9 ("At most, the miscommunication between ODJFS staff constitutes negligence, which is not bad faith.").

[57] *See*, *e.g.*, First Affidavit of Kelly Brogan, Ex. A to Respondents' Answer, ¶¶ 8–9; Second Affidavit of Kelly Brogan, Ex. A to Respondents' Answer to Amended Complaint, ¶¶ 8–9; K. Brogan e-mail to J. Lowe, July 15, 2022, Relator's Ex. 9; K. Brogan e-mail to C. Dickens, July 18, 2022, Relator's Ex. 11; K. Brogan e-mail to C. Rose, July 18, 2022, Relator's Ex. 12; C. Rose e-mail to K. Brogan, July 18, 2022, Relator's Ex. 14; K. Brogan e-mail to C. Rose, July 18, 2022, Relator's Ex. 15; C. Dickens e-mail to K. Brogan, July 19, 2022, Relator's Ex. 16.

[58] Relator's Ex. 28-B, ¶ 3.

[59] Brogan Dep., 29:14–30:17.

[60] Brogan Dep., 56:23–57:2.

The natural inference, then, is that Ms. Alexander gave Ms. Brogan an instruction to halt work on Dr. Gilreath's request. That inference is only bolstered by the Department's failure to produce any records for the following several months, the failure to respond to counsel's e-mail following up on the request, and the failure to resume work on Dr. Gilreath's request until the morning of July 15, 2022, just after they were served the complaint in this action.[61]

2. Even if it was the result of a mistake, Ms. Brogan's failure to produce Dr. Gilreath's records amounts to bad faith because there was no reasonable basis for making that mistake.

But even if Respondents produced unredacted copies of those records proving that their errors were the result of errors in judgment, merely pleading "bad judgment or negligence" is insufficient to avoid a finding of bad faith. For instance, in *Hart v. Republic Mut. Ins. Co.*, 152 Ohio St. 185 (1949), an insured brought bad-faith claims against an insurer that refused to make any settlement in a negligence claim "because it believed there was no liability," despite having no evidence to support that theory of nonliability. A jury entered a verdict for the insured, and this Court affirmed the verdict, holding that a defendant cannot establish good faith when its beliefs are not supported by any facts: "[S]uch a belief may not be an arbitrary or capricious one. The conduct … must be based on circumstances that furnish reasonable justification therefor."[62]

Here, Ms. Brogan's third affidavit claims she simply "mistakenly believed" that someone else had already released the records. But she admitted in her deposition that when she received an e-mail with Dr. Gilreath's records to review and release, that e-mail explicitly asked whether anything should be added or removed.[63] She likewise admits that the e-mail said nothing to

[61] Relator's Ex. 9.

[62] *Hart v. Republic Mut. Ins. Co.*, 152 Ohio St. 185, 188, 87 N.E.2d 347, 349 (1949).

[63] Brogan Dep. 40:8–13.

indicate that the e-mails had already gone out.[64] And she admits that there was nothing inside or outside that e-mail that led her to believe Dr. Gilreath had already received his records.[65]

Without any circumstances furnishing reasonable justification for believing that her conduct was proper, Ms. Brogan's decisions to stop inquiring into the progress of the request, to stop working on the request, and to make no further inquiry into its status was arbitrary and capricious, and therefore amounted to bad faith.

3. The Department's ongoing refusal to even look for responsive records is evidence of bad faith.

The inference of bad faith is further bolstered by the Department's ongoing refusal to make any effort to comply with Dr. Gilreath's requests for Items 3 and 4, based on their comically specious refusal to acknowledge even that people send and receive e-mails in the course of conducting investigations.

Although the ODJFS chief inspector says he conducts investigations[66] and that e-mail is the "normal way to communicate about investigations,"[67] Ms. Brogan insists ODJFS can't be required to provide e-mails in response to a request for records of an investigation because she can't even confirm that the Department conducts investigations at all. Although she's heard rumors of ODJFS conducting investigations, she doesn't know if they're true:

> Q. Do ODJFS employees conduct multiple types of investigations?
>
> MS. JOHNSON: Objection.
>
> A. I don't know.
>
> Q. You don't know?
>
> A. I don't know.

[64] Brogan Dep. 40:14–16.
[65] Brogan Dep. 40:17–41:8.
[66] Johnson Dep. 7:4–5.
[67] Johnson Dep. 22:20–23:9.

Q. Have you ever heard of ODJFS employees conducting investigations?

MS. JOHNSON: Objection.

A. Yes.

Q. Okay. Do you think the people who told you that were telling you the truth?

MS. JOHNSON: Objection.

A. Yes.

Q. Okay. So is it fair to say that you know of ODJFS employees conducting different types of investigations?

MS. JOHNSON: Objection.

A. I'm not — I'm legal counsel. I really can't speak as to ODJFS and the investigations they do and whether somebody at ODJFS does investigations, what they're telling me is true or not. I don't know.

Even if the Department has been conducting investigations, Ms. Brogan insists, ODJFS remains justified in continuing to refuse to search for records of those investigations in its e-mail because "you have to specifically request e-mails, and you did not."[68]

The Court should not accept Ms. Brogan's position, for three reasons: First, because the Department's chief investigator admitted that e-mail is a normal way to document investigations. Second, because even if it weren't, Ms. Brogan admitted in her latest affidavit that she's now been on notice that Dr. Gilreath wanted for e-mails for more than four months.[69] And finally, the Court should reject this argument because **Dr. Gilreath explicitly asked for e-mails**, reminding Mr. Teets to ensure the Department searched "officials' personal e-mail accounts."[70]

The record shows that Respondents stopped processing Dr. Gilreath's request after receiving an undisclosed instruction from counsel, that there was no reason to believe they had

[68] Brogan Dep. 47:6–7.

[69] Third Affidavit of Kelly Brogan, Respondents' Ex. B, ¶ 19.

[70] Respondents' Ex. A-2.

fulfilled his request, and that they refuse to this day to even look for the records they know he is seeking. Because he has satisfied his burden of providing some evidence that Respondents acted in bad faith, Dr. Gilreath is entitled to court costs.

IV. Because he is entitled to a writ of mandamus, because Respondents acted in bad faith, and because they failed to timely respond to his request, Dr. Gilreath is entitled to his attorney's fees.

Under Ohio Rev. Code § 149.43(C)(3)(a), a relator is entitled to an award of attorney's fees if any of the following are true:

1. "[T]he court renders a judgment that orders the [Respondents] to comply with division (B)" of the Act.
2. "[Respondents] failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B)."
3. "[Respondents] promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time."
4. "[Respondents] acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section."

Here, the Court should award attorney's fees under three of the four prongs:

- First, Dr. Gilreath is entitled to attorney's fees because he is entitled to a judgment granting a writ of mandamus ordering Respondents to comply with the Act, as laid out in Section I.
- Second, Dr. Gilreath is entitled to attorney's fees because Respondents failed to respond affirmatively or negatively to his request in accordance with the time allowed under division (B), *i.e.*, within "a reasonable period of time."[71] Here, Respondents received Dr. Gilreath's request on February 25, 2022, but did not respond affirmatively or negatively to the request before July 19, 2022. That delay—144 days—goes far beyond those this Court has already recognized as unreasonable.[72]

[71] *State ex rel. Ware v. Kurt*, 169 Ohio St. 3d 223, ¶ 75 (2022) (Kennedy, J., dissenting).

[72] *State ex rel. Hogan Lovells U.S., L.L.P. v. Dep't of Rehab. & Corr.*, 2018-Ohio-5133, ¶ 32, 156 Ohio St. 3d 56, 64, 123 N.E.3d 928, 936 ("[A] delay as short as six days can be unreasonable").

- Third, Dr. Gilreath is entitled to attorney's fees because Respondents acted in bad faith when they voluntarily made public records available to him for the first time after he commenced the mandamus action, as laid out in Section III.B.

A. Dr. Gilreath is entitled to fees because the structure and purpose of the amended Act require the Court to treat fee awards as mandatory.

Proposition of Law #6:
Fee awards are mandatory when a Relator satisfies any of the criteria in Ohio Rev. Code § 149.43(C)(3)(b).

Although the Court's dicta often describes awards of attorney's fees as "discretionary," they are now mandatory. The structure of the Act compels this result. This Court has long construed attorney's fees as discretionary and cited various circumstances under which it believed it was appropriate to reduce those awards or refuse to grant them at all, focusing on evidence as to whether a respondent's refusal to fulfill a request was reasonable,[73] whether the respondent acted in good faith,[74] and whether the relator demonstrated a public benefit from releasing the requested records.[75]

Against that backdrop, the General Assembly amended the Act to specify not only the circumstances under which the Court may award fees, but also the circumstances under which the Court may either "not award attorney's fees"[76] or "reduce the amount of fees awarded."[77] For four reasons, those amendments now require the Court to treat these awards as mandatory—albeit subject to reduction or elimination under statutorily specified circumstances—when a Relator satisfies any of the criteria in Section (C)(3)(b) that permit an award.

[73] *State ex rel. Fox*, 39 Ohio St. 3d 108, 112 (1988).
[74] *State ex rel. Beacon Journal Pub. Co. v. Akron Metro. Hous. Auth.*, 42 Ohio St. 3d 1 (1989).
[75] *State ex rel. Hirshler v. Frazier*, 63 Ohio St. 2d 333, 335 (1980).
[76] Ohio Rev. Code § 149.43(C)(3)(c).
[77] Ohio Rev. Code § 149.43(C)(4)(d).

1. Mandatory fee awards are required under the *expressio unius* canon.

"Under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded."[78] Although there are narrow circumstances under which the general rule does not apply, it is in full force wherever "the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence."[79]

Here, the General Assembly has expressed the conditions for denying a full fee award as an associated group or series in Section (C) of the Act, laying out the circumstances in which it may award fees in Section (C)(3)(b), followed by the two circumstances that justify denying an award altogether in Section (C)(3)(c)(i) and (ii), then laying out in Sections (C)(4)(a), (b), (c), and (d) the remaining limitations on fee awards. Because the General Assembly was aware that courts were denying fees based on vague standards of reasonableness and public benefit,[80] its carefully structured amendment outlining circumstances under which an award may be reduced or zeroed out implies its rejection of any criteria excluded from that list.

Because the Act's language authorizing reductions in fee awards provides an exclusive list of exceptions, fee awards are mandatory in cases where the relator satisfies any of the criteria laid out in Section (C)(3)(b), unless one of those exceptions is also satisfied.

2. Mandatory fee awards are required to give effect to every word in the Act.

When interpreting statutory language, "the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be

[78] *State v. Droste*, 83 Ohio St. 3d 36, 39 (1998).

[79] *Summerville v. City of Forest Park*, 128 Ohio St. 3d 221, ¶ 35 (2010).

[80] *Clark v. Scarpelli*, 91 Ohio St. 3d 271, 278 (2001) ("It is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment.").

accorded to every word, phrase, sentence and part of an act."[81] "No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative."[82]

Here, the Court must treat fee awards as mandatory in Section (C)(3)(b) cases because treating them as discretionary would render Sections (C)(3)(c) and (C)(4) superfluous. If the General Assembly intended to condition fee awards on courts' discretion, its amendments to add Sections (C)(3)(c) and (C)(4) would have been pointless, as the courts already had the authority to reduce or eliminate fees based on the criteria those clauses lay out.

Because the General Assembly codified those factors while excluding all others, the Court must treat fee awards as mandatory (though subject to reduction) in Section (C)(3)(b) cases.

3. The Court's consideration of good-faith factors is contrary to the amended language of the Act.

The Court's fee cases have for assumed for more than 30 years that "attorney fees are regarded as punitive."[83] That assumption underlies all the Court's subsequent decisions about what factors should inform the decision to grant or deny fees, leading to the current state of the case law, which makes clear that fee awards are contingent primarily on the public benefit associated with compliance, the respondent's bad faith, and the respondent's unreasonableness. *Id.* In the absence of such circumstances, the Court assumed, "courts should not be in the practice of punishing parties" that violate the Act.[84]

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[81] *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St. 3d 390, ¶ 13 (2004).
[82] *State ex rel. Myers v. Bd. of Educ.*, 95 Ohio St. 367, 373 (1917).
[83] *State ex rel. Fox v. Cuyahoga Cty. Hospital Sys.*, 39 Ohio St. 3d 108, 112 (1988).
[84] *State ex rel. Olander v. French*, 79 Ohio St. 3d 176 (1997).

But the General Assembly's amendments to the Act have upended that assumption. The Act now makes perfectly clear that awards of attorney's fees "shall be construed as remedial and not punitive."[85] If the General Assembly's intent in permitting fee awards is to make a relator whole for the effort expended in securing access to records, the Court's traditional discretionary-award framework undermines that intent. When a relator spends thousands of dollars litigating access to a record, fee shifting is equally remedial in good-faith cases and bad-faith cases. Because the award is meant to be remedial, the only question the Court should be asking is whether there is anything to remedy. If fee awards are remedial, the Court should award fees when they remedy an injury. If fee awards are not punitive, the Court should not withhold them to avoid being punitive.

Because the General Assembly has rejected the Court's holdings treating fee awards as punitive, the Court must treat them as mandatory (though subject to reduction) in Section (C)(3)(b) cases where there is an injury to remedy.

4. Mandatory fee awards will advance the Act's purpose of promoting broader access to public records.

"The purpose of Ohio's Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy."[86] The Act must be "construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records."[87]

Continuing to treat attorney's fees as discretionary undermines this purpose. It resolves doubts about the Act's construction in favor of secrecy and discourages efforts to expose government activity to public scrutiny. Under the Court's current fee framework, a records

[85] Ohio Rev. Code § 149.43(C)(4)(a).

[86] *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St. 3d 400, 404 (1997).

[87] *State ex rel. Cordell v. Paden*, 156 Ohio St. 3d 394, ¶ 7 (2019) (quoting *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St. 3d 374, 376 (1996).

custodian has no incentive to cooperate with citizen oversight, as he can simply refuse to produce records until he is sued, and then produce them to moot the case. If the requester's ability to recover the fees incurred to that point are contingent on a court's assessments of the custodian's reasonableness or good faith, a requester has no way to know whether the court will grant her remedial relief in the form of attorney's fees. This framework is particularly perverse in its exclusion of relators who personally benefit from the records they seek.[88] If they won't personally benefit her, what rational requester will spend tens of thousands of dollars litigating for access to records? Most requesters lack the resources to pay an attorney up front to fight over records that provide them no direct benefit, and few attorneys will take a case on contingency when damages are capped at $1,000 and the criteria for fee-shifting are so nebulous that no one can determine how a court will balance the competing facts pointing toward and away from good faith.

As they stand, this Court's fee decisions erect massive barriers to access. If the Court intends to deliver on its promise to construe the Act "liberally in favor of broad access," it must revisit those cases. Given the Court's standard rules of statutory construction, the amendments to the Act since the Court first decided that fee awards were discretionary, and the danger posed by the discretionary-award framework, the Court must treat fee awards as mandatory in Section (C)(3)(b) cases.

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[88] *See*, *e.g.*, *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St. 3d 497, ¶ 60 (2010) ("Mahajan is also not entitled to an award of attorney fees because … any minimal benefit conferred by the writ granted here is beneficial mainly to Mahajan rather than to the public in general."); *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St. 3d 33, ¶ 58 (2006) ("We deny Morgan's request [for fees] because she has not established a sufficient *public* benefit … beneficial mostly to *her* for purposes of a potential civil action."); *State ex rel. Cranford v. Cleveland*, 2004-Ohio-4884, ¶ 26, 103 Ohio St. 3d 196, 200 (2004) ("Cranford did not establish a sufficient public benefit. These records were mostly beneficial to *him*."); *State ex rel. Herthneck v. Gambino*, 1997 Ohio App. LEXIS 5686, at *4 (8th Dist. Dec. 18, 1997) ("Mr. Herthneck has not established a sufficient public benefit to warrant an award of attorney's fees. The pleadings and their attachments indicate that Mr. Herthneck sought these records not for public use or distribution but for use in a private civil lawsuit.").

B. Dr. Gilreath is entitled to fees because he satisfies all the Court's criteria for discretionary fee awards.

Even if the Court continues to treat fee awards as discretionary, Dr. Gilreath is still entitled to fees, as he satisfies all the Court's criteria. As laid out above, a court considering a fee award should consider the respondents' reasonableness and good faith, as well as the public benefit conferred by the release of the record.

As laid out above, neither the failure to respond to Dr. Gilreath's request nor Respondents' ongoing refusal to even search for responsive records is reasonable or in good faith. And Dr. Gilreath provides a public benefit by investigating how government ineptitude is wrongfully turning food-stamp recipients into felons—not only because the public deserves to know about government misconduct, but because food-stamp recipients have a right to be free from such harassment. Here, Dr. Gilreath's willingness to litigate for access to these records serves the public interest by alerting the public to government misconduct and by protecting similarly situated individuals from violations of their Fourteenth Amendment right to be free from malicious prosecution. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights."[89]

Regardless of whether they are mandatory or discretionary, then, the Court should therefore grant Dr. Gilreath a full award of attorney's fees.

CONCLUSION

Dr. Gilreath was entitled to a prompt response to his request, a diligent search for his requested records, and their prompt production in the medium of his choice. But Respondents have failed at every turn, refusing to produce—or even look for—those records. Their obstinate refusal even now, 14 months after receiving Dr. Gilreath's request, to provide the requested

[89] *G V Lounge v. Michigan Liquor Control Com'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing *Gannett Co., Inc. v. DePasquale,* 443 U.S. 368, 383 (1979).

records demonstrates their bad faith. The Court should grant the requested writ of mandamus, order Respondents to produce the requested records and award Dr. Gilreath the full measure of statutory damages, court costs, and fees.

Respectfully submitted,

/s/Brian D. Bardwell
Speech Law LLC
Brian D. Bardwell (0098423)
1265 West Sixth Street, Suite 400
Cleveland, OH 44113-1326
216-912-2195 Phone/Fax
brian.bardwell@speech.law
Attorney for Relator Marcellus Gilreath

CERTIFICATE OF SERVICE

I certify that on May 5, 2023, this document was served on opposing counsel as provided by Civ. R. 5(B)(2)(f).

/s/Brian D. Bardwell
Brian D. Bardwell (0098423)
Attorney for Relator Marcellus Gilreath

APPENDIX

The Ohio Public Records Act, Ohio Rev. Code § 149.43

Section 149.43 | Availability of public records for inspection and copying.

Effective: *April 7, 2023*

Latest Legislation:

House Bill 254 (GA 134), Senate Bill 288 (GA 134), House Bill 45 (GA 134), House Bill 558 (GA 134), House Bill 99 (GA 134), House Bill 343 (GA 134)

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Designated public service worker residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;

(dd) Personal information, as defined in section 149.45 of the Revised Code;

(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record; records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state; and any real property confidentiality notice filed under section 111.431 of the Revised Code and the information described in division (C) of that section. As used in this division, "confidential

address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

(gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to

the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

(mm) Except as otherwise provided in division (A)(1)(oo) of this section, telephone numbers for a victim, as defined in section 2930.01 of the Revised Code or a witness to a crime that are listed on any law enforcement record or report.

(nn) A preneed funeral contract, as defined in section 4717.01 of the Revised Code, and contract terms and personally identifying information of a preneed funeral contract, that is contained in a report submitted by or for a funeral home to the board of embalmers and funeral directors under division (C) of section 4717.13, division (J) of section 4717.31, or section 4717.41 of the Revised Code.

(oo) Telephone numbers for a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report, except that the telephone numbers described in this division are not excluded from the definition of "public record" under this division on and after the thirtieth day after the occurrence of the motor vehicle accident.

(pp) Records pertaining to individuals who complete training under section 5502.703 of the Revised Code to be permitted by a school district board of education or governing body of a community school established under Chapter 3314. of the Revised Code, a STEM school

established under Chapter 3326. of the Revised Code, or a chartered nonpublic school to convey deadly weapons or dangerous ordnance into a school safety zone;

(qq) Records, documents, reports, or other information presented to a domestic violence fatality review board established under section 307.651 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than a report prepared pursuant to section 307.656 of the Revised Code;

(rr) Records, documents, and information the release of which is prohibited under sections 2930.04 and 2930.07 of the Revised Code;

(ss) Records of an existing qualified nonprofit corporation that creates a special improvement district under Chapter 1710. of the Revised Code that do not pertain to a purpose for which the district is created.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under section 3107.083 of the Revised Code, a denial of release form filed pursuant to section 3107.46 of the Revised Code, or any record that is exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher

learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.

(8) "Designated public service worker residential and familial information" means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Designated Ohio national guard member" means a member of the Ohio national guard who is participating in duties related to remotely piloted aircraft, including, but not limited to, pilots, sensor operators, and mission intelligence personnel, duties related to special forces operations, or duties related to cybersecurity, and is designated by the adjutant general as a designated public service worker for those purposes.

"Protective services worker" means any employee of a county agency who is responsible for child protective services, child support services, or adult protective services.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Emergency service telecommunicator" has the meaning defined in section 4742.01 of the Revised Code.

"Forensic mental health provider" means any employee of a community mental health service provider or local alcohol, drug addiction, and mental health services board who, in the course of the employee's duties, has contact with persons committed to a local alcohol, drug addiction, and mental health services board by a court order pursuant to section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.

"Mental health evaluation provider" means an individual who, under Chapter 5122. of the Revised Code, examines a respondent who is alleged to be a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, and reports to the probate court the respondent's mental condition.

"Regional psychiatric hospital employee" means any employee of the department of mental health and addiction services who, in the course of performing the employee's duties, has contact with patients committed to the department of mental health and addiction services by a court order pursuant to section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

(15) "Body-worn camera" means a visual and audio recording device worn on the person of a correctional employee, youth services employee, or peace officer while the correctional employee, youth services employee, or peace officer is engaged in the performance of official duties.

(16) "Dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording;

(b) The death of a person or a deceased person's body, unless the death was caused by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(d) Grievous bodily harm, unless the injury was effected by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(e) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(f) Grievous bodily harm to a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was

engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(g) An act of severe violence resulting in serious physical harm against a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(h) A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;

(i) Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;

(j) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;

(k) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to the department of rehabilitation and correction, the department of youth services, or a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;

(l) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;

(m) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;

(n) A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;

(o) A conversation between a peace officer and a member of the public that does not concern law enforcement activities;

(p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;

(q) Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

As used in division (A)(17) of this section:

"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.

"Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

"Protected health information" has the same meaning as in 45 C.F.R. 160.103.

"Law enforcement agency" means a government entity that employs peace officers to perform law enforcement duties.

"Personal information" means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

"Sex offense" has the same meaning as in section 2907.10 of the Revised Code.

"Firefighter," "paramedic," and "first responder" have the same meanings as in section 4765.01 of the Revised Code.

(B)(1) Upon request by any person and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the

manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use, and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require the requester to pay in advance the cost involved in providing the copy of the public record in

accordance with the choice made by the requester under this division. The public office or the person responsible for the public record shall permit the requester to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the requester makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the requester. Nothing in this section requires a public office or person responsible for the public record to allow the requester of a copy of the public record to make the copies of the public record.

(7)(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator

all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative

means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records

manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request"

does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the

recording or a representative of that person, as specified in those divisions, only if either of the following applies:

(a) The recording will not be used in connection with any probable or pending criminal proceedings;

(b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

(2) If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.

The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in R.C. 1.52(B) that amendments are to be harmonized if reasonably capable of simultaneous operation.

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Available Versions of this Section

September 29, 2013 – House Bill 59 - 130th General Assembly

March 20, 2015 – Senate Bill 23 - 130th General Assembly

March 23, 2015 – House Bill 663 - 130th General Assembly

September 29, 2015 – House Bill 64 - 131st General Assembly

September 8, 2016 – Amended by Senate Bill 321, House Bill 359, House Bill 317 - 131st General Assembly

December 19, 2016 – Amended by House Bill 471 - 131st General Assembly

November 2, 2018 – Amended by House Bill 34, House Bill 312, House Bill 8 - 132nd General Assembly

April 8, 2019 – Amended by House Bill 341, Senate Bill 201, Senate Bill 214, House Bill 425, House Bill 139, House Bill 34, Senate Bill 229, House Bill 312, House Bill 8 - 132nd General Assembly

October 17, 2019 – Amended by House Bill 166 - 133rd General Assembly

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April 7, 2023 – Amended by House Bill 254 (GA 134), Senate Bill 288 (GA 134), House Bill 45 (GA 134), House Bill 558 (GA 134), House Bill 99 (GA 134), House Bill 343 (GA 134)